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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,727	09/23/2003	George Mauro	NATAPE P16BUSP1	2458
20210-7590	12/21/2004		EXAMINER	
DAVIS & BUJOLD, P.L.L.C. FOURTH FLOOR 500 N. COMMERCIAL STREET MANCHESTER, NH 03101-1151			ALIE, GHASSEM	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 12/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/668,727	Applicant(s) MAURO, GEORGE	
	Examiner Ghassem Alie	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16-19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 3, 6-11, 14, 18, 19, 21, and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 5, 12, 13, 16, and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

1. Applicant's election with traverse of IV (Figs. 7 and 7A) on 12/02/04 is acknowledged. The traversal is on the ground(s) that all the twenty one species contain features presently recited in claim 1. Applicant's traverse is misplaced. Clearly, different species are claimed and each species as identified by the Examiner is patentably distinct from one another. Generic claims permit rejoinder of a reasonable number of claims if one or more generic claims are found to be allowable. However, applicant's independent claims are not generic. In order to be generic a claim must comprehend within its confines the organization covered in each of the species. This is not possible here. For example, one species has first and second blades both lies within a blade plane and another species has first and second pairs of blades and each pair of blades has a different blade plane than other pair of blades. While the broad claims may be broad enough to encompass several species they are not generic as defined by MPEP 806.04(D). Nevertheless, if an independent or superior claim that encompasses other claimed species is allowed, rejoinder will be permitted as long as there is compliance with respect to 35 U.S.C., 2<sup>nd</sup> paragraph.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 3, 6-11, 14, 18, 19, and 21-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim.

Claims 1, 2, 4, 5, 12, 13, 16, and 17 will be examined.

Claims 15 and 20 have been cancelled by an amendment filled on 11/04/04.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 2, 4, 5, 12, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding Claim 1, “the at least one cutting surface having a cutting surface edge which is located adjacent a plane defined by the cutting member edge to facilitate formation of a closed bottom bore within fruit during use of the device” is confusing. It is not clear how “a closed bottom bore” is formed. It is not clear how the cutting surface edge of the at least one cutting surface contributes in formation of a closed bottom bore.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 4, 5, 12, 13, 16, and 17, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Krilow (2,188,362). Regarding claim 1, Kirlow teaches a fruit coring device including a cutting member having a leading cutting edge 11 and the cutting member being affixed to a handle 17, 20. The leg or legs 17 fasten the first end of the circular tubular member 10 to the handle 20. Kirlow also teaches that the at least one cutting surface 14, 15 having a cutting surface edge which is located adjacent a plane defined by the

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cutting member edge 11 to facilitate formation of a closed bottom bore within fruit during use of the device. See Figs. 1-3 and col. 2, lines 1-55 and col. 3, lines 1-17 in Kirlow.

Regarding claim 2, Kirlow teaches everything noted above including that the at least one cutting surface 14, 15 defines a blade plane which is coincident with a longitudinal axis defined by the cutting member 10. See Figs. 1-3 and col. 2, lines 1-20 in Kirlow.

Regarding claim 4, Kirlow teaches everything noted above including that the at least one cutting surface 14, 15 includes first and second blades 12, 13 which are accommodated within an interior region of the cutting member and the first and second blades 12, 13 lie within a blade plane. See Figs. 1-3 in Kirlow.

Regarding claim 5, Kirlow teaches everything noted above including that the blades plane defined by the first and second blades 12, 13 is coincident with a longitudinal axis defined by the cutting member 10. See Figs. 1-3 and col. 2, lines 1-20 in Kirlow.

Regarding claim 12, Kirlow teaches everything noted above including that the leading cutting member edge has at least one tapered surface formed therein and the cutting member edge 11 lie in a cutting plane. See Fig. 1 in Kirlow.

Regarding claim 13, Kirlow teaches everything noted above including that the cutting member is a tubular member 10 with first and second ends the first end of the cutting member carries the cutting member edge 11 and a second end of the cutting member is coupled to the handle 17, 20. See Fig. 1 in Kirlow.

Regarding claim 16, Kirlow teaches everything noted above including a tubular member 10 having a first and second ends defining a longitudinal axis and the tubular member 10 having an interior cavity. Kirlow also teaches that the first end of the tubular

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member 10 being connected with the handle 17, 20 and the second end defining a member cutting edge 11 and at least one blade 12, 13 having a blade cutting edge. Kirlow also teaches that at least one blade being support within the interior cavity of the tubular member 10 such that the blade cutting edge lies substantially in a plane defined by the member cutting edge 11. See Figs. 1-3 and col. 2, lines 1-55 and col. 3, lines 1-17 in Kirlow.

Regarding claim 17, Kirlow teaches everything noted above including first and second blades 12, 13 are accommodated within the interior cavity of the circular tubular member 10 and the first and second blades both lie within a blade plane.

The following is the alternative rejections of claims 1, 2, 4, 5, 12, 13, 16, and 17.

7. Claims 1, 2, 12, 13, and 16, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (1,794,800). Regarding claim 1, Smith teaches a fruit coring device 10 including a cutting member having a leading cutting edge and the cutting member being affixed to a handle 15. Smith also teaches at least one cutting surface 16 having a cutting surface edge which is located adjacent a plane defined by the cutting member edge to facilitate formation of a closed bottom bore within fruit during use of the device. See Figs. 1-3 and page 1, lines 30-95 in Smith.

Regarding claim 2, Smith teaches everything noted above including that the at least one cutting surface defines a blade plane which is coincident with a longitudinal axis defined by the cutting member. See Figs. 1-3 in Smith.

Regarding claim 12, Smith teaches everything noted above including that the leading cutting member edge has at least one tapered surface formed therein and the cutting member edge lie in a cutting plane. See Figs. 1-3 in Smith.

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Regarding claim 13, Smith teaches everything noted above including that the cutting member is a tubular member with first and second ends the first end of the cutting member carries the cutting member edge and a second end of the cutting member is coupled to the handle 15. See Figs. 1-3 in Smith.

Regarding claim 16, Smith teaches everything noted above including a tubular member having a first and second ends defining a longitudinal axis and the tubular member having an interior cavity. Smith also teaches that the first end of the tubular member being connected with the handle 15 and the second end defining a member cutting edge and at least one blade 16 having a blade cutting edge. Smith also teaches that at least one blade being support within the interior cavity of the tubular member such that the blade cutting edge lies substantially in a plane defined by the member cutting edge. See Figs. 1-3 in Smith.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lin (5,101,718), Buck et al. (5,056,223), Dick (4,277,891), Gardner (2,031,766), Poltielov (6,148,719 and RE37,321), Braswell (4,905,375), Hirano (4,546,545), Knasel (5,463,943), and Rasaka et al. (2,549,008) teach a coring device including a circular tubular member and a handle.

Lin (5,457,888), Taylor (1,744,422), Balzano (4,690,047), Schilier (1,977,017), Yann (1,848,985), Variades et al. (1,422,066), and Thomas (1,568,008) teach a coring device including a circular tubular member and a flat blade.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on (571) 272-4514. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9302 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

GA/ga

December 15, 2004

  
Allan N. Shoap  
Supervisory Patent Examiner  
Group 3700